

STATE OF MICHIGAN
COURT OF APPEALS

LAURA L. HALEY,

Plaintiff-Appellant,

v

DAYNE DAVIS, INC., and,
WILLIAM L. FERGUSON,

Defendants-Appellees.

UNPUBLISHED

August 16, 2005

No. 253003

Genesee Circuit Court

LC No. 02-074725-NO

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).¹

Plaintiff fell on basement stairs while viewing a rental property owned and managed by defendants. Plaintiff alleges she sustained various injuries as a result. On appeal, plaintiff argues the trial court improperly granted defendants' motion for summary disposition because there was a genuine issue of material fact regarding whether the danger posed by the staircase was open and obvious. Plaintiff additionally argues that, even if the danger was open and obvious, there were genuine issues of material fact concerning whether the staircase had special aspects making it unreasonably dangerous.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Graves v American Acceptance Mortgage Corp (On Rehearing)*, 469 Mich 608, 613; 677 NW2d 829 (2004). A summary disposition motion pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451

¹ On the Court's own motion, the parties were asked to participate in oral argument on August 2, 2005. Both parties declined to appear before this Court for oral argument.

Mich 358, 362; 547 NW2d 314 (1996); *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Miller, supra* at 246.

In cases alleging negligence, whether a defendant owed a duty to the plaintiff is ordinarily a question of law for the court; if no duty exists, summary disposition is proper. *Howe v Detroit Free Press, Inc*, 219 Mich App 150, 155-156; 555 NW2d 738 (1996). However, if there are genuine factual questions whether conditions existed which gave rise to a duty; the issue must be submitted to the trier of fact. *Id.* This Court reviews determinations of the existence of a duty as a matter of law de novo. *Fultz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004).

In a premises liability action, plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages. *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000). The duty a defendant landowner owes a plaintiff depends on the plaintiff's status on the land. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). A person invited on the land for the owner's commercial purposes or pecuniary gain is an invitee. *Id.* at 604. In general, an owner "owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty does not require the owner to protect an invitee from open and obvious dangers, but, "if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the [owner] has a duty to undertake reasonable precautions to protect invitees from that risk." *Id.* at 517.

Plaintiff first argues on appeal that defendants owed her a duty because the dangerous condition of the staircase was not open and obvious. Generally, a danger is open and obvious if it is known to the invitee or if the invitee should reasonably be expected to discover it. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992); *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). The test is objective; a court should determine whether a reasonable person with normal intelligence would have been able to discover the danger and risk upon casual inspection. *Joyce, supra* at 238-239. Generally, the risks of tripping and falling on a step are open and obvious. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995).

Here, plaintiff could plainly see she was approaching a dark, basement staircase. The staircase was otherwise unfamiliar to her since she had not previously used it. Because of the darkness, she was unable to see the other characteristics of the staircase including whether it was equipped with handrails. She proceeded to descend the staircase and fell when she reached out to one side for a handrail. We conclude that a reasonable person of normal intelligence would have perceived upon casual inspection that the staircase posed an obvious danger. Particularly given the commonness of encountering stairs in everyday life, a reasonable person knows a dark staircase poses various dangers that could cause a fall. Danger is foreseeable, in part, precisely

because a dark staircase has undiscovered characteristics, including whether it is equipped with a handrail and, if so, on which side the handrail is attached. Therefore, we agree with the trial court's determination that no reasonable juror could have concluded the dangerous condition of the staircase was not open and obvious.

Second, plaintiff argues that, even if the dangerous condition was open and obvious, there were special aspects which made the staircase unreasonably dangerous. Summary disposition is improper if a reasonable trier of fact could find the condition had special aspects that "give rise to a uniquely high likelihood of harm or severity of harm." *Lugo, supra* at 517-519. As examples of such conditions, the *Lugo* Court suggested a commercial building with only one public exit where the floor is covered with standing water, and an unguarded thirty foot deep pit in the middle of a parking lot. *Id.* at 518. In any particular case the aggregate of factors present should be analyzed to determine if a uniquely high likelihood or potential severity of harm exists. *O'Donnell v Garasic*, 259 Mich App 569, 578; 676 NW2d 213 (2003). One such factor may be that encountering the condition was effectively unavoidable. *Lugo, supra* at 518; *O'Donnell, supra* at 578.

Here, even viewing the evidence in a light most favorable to plaintiff, poorly lit, somewhat steep, basement stairs without a handrail do not present a unique condition of unreasonable risk. Moreover, plaintiff's use of the staircase was not effectively unavoidable. Plaintiff claims she was psychologically compelled to view the basement; she felt she needed to rent a home quickly because she had been given a limited amount of time to stay at a homeless shelter. She was further worried she would not be able to get transportation back to the rental home to view the basement on another day. However, plaintiff's uniquely personal reasons for encountering a danger should not be considered when a court determines whether a condition poses a high risk of harm. *Lugo, supra* at 519 n 2. The risk posed by a condition should be considered *a priori*, before the incident involved in a particular case; a condition does not pose a high risk of harm merely because a plaintiff is severely injured for unforeseeable, idiosyncratic reasons. *Id.* We agree with the trial court's determination that no reasonable juror could have concluded the staircase had special aspects posing an unreasonable risk of harm. Therefore, the trial court properly granted defendants' motion for summary disposition on the grounds that there were no genuine issues of material fact that the dangerous condition of the staircase was open and obvious and no special aspects existed.

Affirmed.

/s/ Stephen L. Borrello
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly